

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CIRBA INC. D/B/A DENSIFY

and CIRBA IP, INC.,

Plaintiffs/Counter-Defendants,

v.

VMWARE, INC.,

Defendant/Counter-Plaintiff.

Civil Action No. 1:19-cv-00742-MN

(Consolidated)

**PLAINTIFF'S MOTION TO UPDATE THE CASE CAPTION
OR SUBSTITUTE PARTIES**

Plaintiff Cirba Inc. (d/b/a Densify) respectfully moves the Court to update the case caption. Cirba Inc. (“Inc.”) and Cirba IP, Inc. (“IP”) amalgamated under Canadian law, which means that what used to be two distinct entities have now fused into a single entity called Cirba Inc. By operation of law, IP now *is* the amalgamated entity Cirba Inc. For those claims where IP was the sole plaintiff, Cirba Inc. is now the sole plaintiff, and for those claims to which IP and pre-amalgamation Inc. were joint parties, the amalgamated entity Cirba Inc. is now the sole party on Cirba’s side. No further action is necessary to change the identity of the parties.

In the interest of clarity, Cirba Inc. moves to update the caption to reflect this new reality by simply dropping IP from the caption. There is good cause to update the caption to formally acknowledge the amalgamation and promote clarity as to the current status of the parties and claims in this complex case. VMware faces no possible prejudice from updating the caption, as all of its claims and counterclaims were already against Inc. alone, and updating the caption will not affect discovery or the parties’ substantive rights.

While Cirba Inc. believes that an administrative update to the caption is sufficient, in the alternative, it requests substitution of Cirba Inc. for IP under Rule 25(c) of the Federal Rules of Civil Procedure. The amalgamation already had the same result in that it combined the parties on Cirba's side of this litigation (Inc. and IP) into Cirba Inc., but substitution is also an available procedural mechanism if the Court prefers. As with merely updating the caption, substitution would promote clarity and efficiency without prejudicing VMware.

Cirba Inc. confirms that a reasonable effort has been made to reach agreement with VMware on the matters set forth in this motion. VMware's counsel indicated that VMware will oppose the motion.

As explained in detail in the accompanying brief, the Court should update the caption to read: CIRBA INC. D/B/A/ DENSIFY, *Plaintiff/Counter-Defendant*, v. VMWARE, INC., *Defendant/Counter-Plaintiff*. A proposed order is attached to this motion as Exhibit 1.

Dated: July 29, 2022

/s/ Kenneth L. Dorsney

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ATTORNEYS FOR CIRBA INC.
(d/b/a DENSIFY)

EXHIBIT 1

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JURY TRIAL DEMANDED

[PROPOSED] ORDER

Before the Court is Plaintiff's Motion to Update the Case Caption or Substitute Parties.

Upon consideration of the materials submitted by the parties, the Court ORDERS that the motion is hereby GRANTED.

The caption should read: CIRBA INC. D/B/A/ DENSIFY, *Plaintiff/Counter-Defendant*, v.

VMWARE, INC., *Defendant/Counter-Plaintiff*.

Executed: ____ day of _____, 2022

By _____
Honorable Judge Maryellen Noreika
United States District Judge